

ORDINANCE #90- 41

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, ENACTED TO PROTECT WETLANDS IN THE COUNTY, TO BE KNOWN AS THE PALM BEACH COUNTY WETLANDS PROTECTION ORDINANCE; PROVIDING FOR THE PROTECTION AND PRESERVATION OF WETLANDS; PROVIDING FOR A PERMIT APPLICATION REVIEW PROCESS; PROVIDING FOR AN APPEAL PROCESS; PROVIDING FOR CERTAIN PROHIBITIONS; PROVIDING FOR ENFORCEMENT REMEDIES; PROVIDING FOR REPEAL OF LAWS IN CONFLICT, INCLUDING PALM BEACH COUNTY ORDINANCE NO. 81-18, AS AMENDED; PROVIDING FOR SEVERABILITY; PROVIDING FOR AUTHORITY; PROVIDING FOR INCLUSION IN CODE OF LAWS AND ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, wetlands in Palm Beach County play critical roles in storage and conveyance of flood and stormwaters, protection of water quality and reduction in sediment, production of fish, providing habitat for endangered plant and animal species, food chain support for a broad range of wildlife, waterfowl production, fisheries production, and outdoor recreation; and

WHEREAS, an estimated seventy percent (70%) of the wetlands in Palm Beach County have already been impacted due but not limited to the cumulative impacts of dredge, fill, drainage, wellfield drawdowns, and water pollution; and

WHEREAS, wetland restoration, creation, and enhancement have potential for both insuring no further net loss and restoring the functions of already degraded or destroyed systems; and

WHEREAS, restoration, creation and enhancement of wetlands can supplement, but not replace, protection efforts; and

WHEREAS, Objective #4, Conservation Element of the 1989 Palm Beach County Comprehensive Plan establishes a goal to maintain the functions and values provided by wetlands and deep water habitats, so that there will be no net loss of the functions and values due to development or other activities; and

WHEREAS, the Palm Beach County Environmental Control Act, Chapter 77-616, Special Acts, Laws of Florida, establishes the Palm Beach County Board of County Commissioners as the Palm Beach County Environmental Control Board and authorizes said Board to adopt, revise and amend appropriate ordinances and rules necessary for the implementation and effective enforcement, administration and interpretation of the provisions of the Act; and

WHEREAS, in 1978, the Palm Beach County Board of County Commissioners sitting as the Palm Beach County Environmental Control Board, pursuant to the Palm Beach County Environmental Control Act, adopted the Palm Beach County Environmental Control Ordinance (Number 78-5) with subsequent amendments by

Ordinances #79-15, #85-25, #85-42, #87-22 and #89-14; and

WHEREAS, in 1981, the Palm Beach County Board of County Commissioners sitting as the Palm Beach County Environmental Control Board, pursuant to the Palm Beach County Environmental Control Act, adopted the Palm Beach County Mangrove Protection Ordinance (Number 81-18) with subsequent amendments by Ordinance #88-13; and

WHEREAS, on April 5, 1988, the Palm Beach County Board of County Commissioners transferred the wetlands regulation program from the Palm Beach County Health Unit to the Palm Beach County Department of Environmental Resources Management, effective June 15, 1988; and

WHEREAS, it is appropriate to make changes to the Palm Beach County Environmental Control Ordinance and Mangrove Protection Ordinance to reflect the changing needs in wetlands protection in Palm Beach County.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY that:

Section 1. SHORT TITLE AND APPLICABILITY

1.01 This Ordinance shall be known as the "Palm Beach County Wetlands Protection Ordinance."

1.02 The recitations set forth in the "WHEREAS" paragraphs above are incorporated by reference herein as findings of fact upon which this Ordinance is based.

1.03 All provisions of this Ordinance shall be effective within the unincorporated and incorporated areas of Palm Beach County, Florida, and shall set restrictions, constraints and requirements to preserve and protect wetlands.

1.04 This Ordinance shall be liberally construed to effect the purposes set forth herein.

1.05 This Ordinance shall apply to the dredging, filling, draining of wetlands, or any other manner of alteration which has the potential to adversely impact wetlands located in Palm Beach County.

Section 2. AUTHORITY

2.01 This Ordinance is adopted under the authority of the Palm Beach County Environmental Control Act, Chapter 77-616, Special Acts, Laws of Florida, as amended.

1 2.02 In accordance with the existing local program agreement, this
2 Ordinance is adopted pursuant to Section 403.182, Florida Statutes. Chapter 403,
3 Florida Statutes, Part VIII, and Chapters 17-4, 17-301, 17-302, 17-321 and 17-
4 312, Florida Administrative Code, are adopted as if set forth in full herein.
5 In the event of a conflict between this Ordinance and the adopted Florida Statute
6 or Florida Administrative Codes the provisions which are more stringent shall
7 govern.

8 2.03 Private single-family dock permitting authority delegated to the
9 Department by the U.S. Army Corps of Engineers by General Permit SAJ-9
10 is adopted as if set forth in full herein. In the event of a conflict between
11 this Ordinance and General Permit SAJ-9, the provisions which are more stringent
12 shall govern.

13 2.04 Mangrove trimming criteria for Aquatic Preserves, as delegated to the
14 Department by agreement with the Florida Department of Natural Resources, is
15 adopted as if set forth in full herein. In the event of a conflict between this
16 Ordinance and said delegation agreement, the provisions which are more stringent
17 shall govern.

18 Section 3. DEFINITION OF TERMS

19 3.01 The following definitions shall apply within this Ordinance.

- 20 (a) Alteration. Any dredging, filling, cutting, drainage, or flooding of
21 a jurisdictional wetland.
- 22 (b) Applicant. Any person or entity requiring a wetland alteration permit.
- 23 (c) Buffer. An upland area intended to protect wetlands from dredge, fill
24 and/or construction activities on adjacent uplands.
- 25 (d) Cambium. A layer of cells in the stems and roots of vascular plants
26 that gives rise to phloem and xylem.
- 27 (e) Commercial Marinas. Shall be those facilities providing boat storage
28 to persons other than residents of the immediately adjacent uplands,
29 or those facilities providing for boat maintenance or repair.
- 30 (f) C.Y. Cubic Yards.
- 31 (g) Creation. A human activity which brings a wetland into existence at
32 a site where it does not currently occur.
- 33 (h) Department. The Palm Beach County Department of Environmental
34 Resources Management, charged by the Board of County Commissioners with
35 responsibility for administering and enforcing this Ordinance.

- (i) Dock. A boat mooring facility which has no more than ten (10) boat slips, and which does not provide a fuel facility, sewage pump-out station, or commercial land-to-water boat hoist.
- (j) Dredging. Any disruption or displacement of wetland substrate or bottom sediments or contours. It also means the excavation or creation of a water body which is or will be connected to jurisdictional wetlands as defined in Section 4.
- (k) Enhancement. A human activity which increases one or more natural functions of an existing wetland.
- (l) Filling. The placement of any material in, on, or over a jurisdictional wetland.
- (m) Freeze Damaged Mangroves. Mangroves that have suffered freeze damage but evidence of life still remains, such as green leaves. These mangroves would be characterized by having dead material on the ends of some of their branches or dead material on one side of the tree. In all cases freeze damaged mangroves will appear to still have a percentage of live material in their composition.
- (n) Freeze Killed Mangroves. Mangroves that have suffered severe freeze damage, such that by October 1, following the last freeze they show no sign of recuperation such as new leaf or branch growth or any evidence of live cambium.
- (o) Functions. The roles wetlands serve, including but not limited to flood storage, flood conveyance, ground water recharge and discharge, erosion control, wave attenuation, water quality enhancement and protection, nutrient removal, food chain support, wildlife habitat, breeding and habitat grounds for fishery species, and recreational values.
- (p) In Kind. The creation or enhancement of a wetland with vegetation and functions as those of an identified wetland.
- (q) Jurisdictional Wetland. Any wetland as defined in accordance with the provisions of Section 4.
- (r) Mangrove. Means any specimen of the species Avicennia germinans (black mangrove), Laguncularia racemosa (white mangrove), Rhizophora mangle (red mangrove), or Conocarpus erectus (buttonwood).
- (s) Mangrove Fringe. Shall be those shoreline mangrove areas whose width

does not exceed thirty feet as measured from the landward edge of the mangrove trunk most landward of MHW (or MHW itself in the absence of any landward tree), waterward along a line perpendicular to MHW, to the waterward edge of the mangrove trunk most waterward of MHW.

(t) Marinas. Those mooring facilities providing for greater than ten (10) boat slips or any facility providing a fuel facility, sewage pump-out station, or commercial land-to-water boat hoist.

(u) Mitigation. The compensation for the loss of wetland acreage, value and functions by the creation of new wetlands or the enhancement of existing wetlands.

(v) MHW. Mean high water.

(w) MLW. Mean low water.

(x) OHW. Ordinary high water.

(y) OLW. Ordinary low water.

(z) Pneumatophore. Means the aerial root structure from the species Avicennia germinans (black mangrove), or Laguncularia racemosa (white mangrove).

(aa) Prop Root. Means the structures originating below the lowest limbs of the red mangrove that are also known as stilt roots.

(bb) Seagrasses. Those submerged beds of the genera *Halophila*, *Syringodium*, *Halodule*, *Thalassia*, and/or the green algae *Caulerpa* spp.

(cc) Wetland. Any persistent and/or intermittent water body or area characterized by the dominance of those submerged and/or transitional wetland species listed in Chapter 17-301 Florida Administrative Code, and located within Palm Beach County including up to three (3) statute miles directly offshore of Palm Beach County. Dominance shall be defined in accordance with Florida Administrative Code Rule 17-301.200 and shall be determined in the appropriate plant stratum (canopy, subcanopy, or ground cover) as outlined in Florida Administrative Code Rule 17-301.400.

Section 4. JURISDICTION.

4.01 The County shall have regulatory authority over all wetlands as defined in Section 3.(cc) of this Ordinance, with the exception of:

(a) Isolated wetlands, less than one-half (1/2) acre total area, entirely surrounded by uplands: and

- (b) Storm water treatment and flood attenuation ponds as permitted by the South Florida Water Management District which are located behind a water control structure, with no overlap on wetlands.
- (c) Man made sewage treatment and percolation ponds as permitted by the Florida Department of Environmental Regulation.

4.02 Permit applications for which the Palm Beach County Board of County Commissioners is the applicant, shall be processed by other State and Federal agencies as appropriate.

4.03 Upon request, the Department shall provide a wetlands jurisdictional determination of a specified parcel of land. The request shall include at least three (3) aerial photographs of the land at a scale of 1"=200' or less scale, with the subject property boundaries clearly marked. At the request of the Department, the land owner may be required to provide directions, access, or field marking of the subject parcel. Such jurisdictional determinations shall be considered accurate by the Department for a period of two years, unless the site vegetation or hydrology changes, or there is a change to this Ordinance, at which time the jurisdictional determination shall be considered invalid.

Section 5. PERMITS

5.01 Any construction, dredging, filling, or alteration in, on or over a jurisdictional wetland shall require a permit by the Department, unless specifically exempted by this Ordinance.

5.02 Permit applications shall be made on forms prescribed by the Department. The Department is encouraged to make use of forms already in use by other state or federal environmental regulatory agencies.

5.03 An application shall not be deemed complete until the application fee and all information reasonably necessary to fully understand the extent, nature, and potential impacts of a proposed project are received by the Department. Such information may include, but is not limited to:

- (a) An explanation of the need and intent of the project;
- (b) A description of construction or alteration methodology;
- (c) A completed application form;
- (d) Aerial photographs;
- (e) Line sketches;
- (f) Sediment analysis;
- (g) Water quality analysis;

- (h) Engineering models and predictions;
- (i) Methods of water quality control;
- (j) Biological evaluation of the project site, including benthic macroinvertebrate sampling and reporting;
- (k) Identification of the species and location of wetland vegetation in the vicinity of, and likely to be affected by, the project;
- (l) Water depths referenced to MLW, MHW, OLW, or OHW, as appropriate;
- (m) Estimated cost of any mitigation;
- (n) Site plan;
- (o) Scaled photographs of mangroves prior to alterations. (Permits issued to alter mangroves within an Aquatic Preserve shall require similar photographs after alteration).

5.04 Items a-c, e, k, n, and o described above shall be a minimum requirement for any application made to alter mangroves within an Aquatic Preserve.

5.05 It shall be the responsibility of the applicant to provide a copy of the submitted application form to all adjacent property owners whose property also adjoins the wetland (via certified mail) when a request is made by the Department pursuant to Section 5.06. Within thirty (30) days of such a request, the applicant shall provide the certified mail receipts to the Department.

5.06 Where an application is made for work in common areas of a multi-family residential site (i.e., condominiums, apartments, townhouses, villas, and similar structures) the representative association, or all of the homeowners as a group, shall be the applicant. The Department shall not process an application made by one unit owner in a multi-family setting where the work is proposed on lands designated as common areas.

5.07 Upon receipt of an application and appropriate application fee, the Department shall have thirty (30) days to request any additional information pursuant to Section 5.03 above. Within thirty (30) days of receipt of such additional information, the Department may request only that information needed to clarify such additional information or to answer new questions raised by or directly related to such additional information. The Department may begin processing an application in the absence of the appropriate application fee. However, no time clocks of this section shall begin until the appropriate application fee is received.

1 5.08 If the Department does not make a request for additional information
2 within thirty (30) days of receipt of an application and appropriate
3 application fee or requested information, the application shall be deemed
4 complete upon receipt.

5 5.09 If an applicant fails to respond to a Department request for an
6 application fee, or any additional information, within sixty (60) days, the
7 application may be deactivated without prejudice. However, the Department may
8 grant an extension of time as is reasonably necessary to fulfill the request for
9 additional information.

10 5.10 Upon receipt of a completed application and fee, the Department shall
11 have ninety (90) days to take final action, unless the time clock is tolled by
12 the applicant. Final action shall be permit issuance, permit denial, or
13 conditional permit issuance. Failure by the Department to take final action
14 within ninety (90) days shall result in the authorization of the proposed work
15 with standard limiting conditions.

16 5.11 Any application containing false information, or any permit issued
17 based upon false information, may be denied or revoked and may subject the
18 applicant to enforcement proceedings pursuant to Section 8 of this Ordinance.

19 5.12 Department permits shall be issued with a duration period that is
20 reasonably necessary to complete the project and any necessary mitigation, not
21 to exceed five (5) years for projects up to 100 acres of wetlands and not to
22 exceed ten (10) years for projects over 100 acres of wetlands.

23 5.13 The Department may attach conditions to any permit where such
24 conditions are deemed reasonably necessary to protect the environmental integrity
25 of the subject site, restoration or mitigation areas, and/or adjacent wetland
26 areas.

27 5.14 Any application received that is substantively the same as a previous
28 application that has been denied by the Department shall also be denied without
29 further processing.

30 5.15 Any site or applicant which has been found to be in violation of any
31 ordinance administered by the Department, after exhaustion of any and all appeal
32 rights, shall not be issued a Department permit until such violation has been
33 corrected.

34 5.16 Any substantial modification to a complete application (unless the
35 modification is recommended by the Department) or to an issued permit, shall

1 require an additional application fee pursuant to Section 7 of this Ordinance and
2 shall restart the time frames of this Section.

3 5.17 Department permits issued solely to maintain mangrove trees to
4 specified dimensions may be renewed annually provided that:

5 (a) A written request for renewal and application fee is received while the
6 permit is valid; and
7 (b) the project is in compliance with the current permit; and
8 (c) the project complies with standards of this Ordinance as it exists at
9 the time of application.

10 5.18 All drawings for applications other than work on a private
11 single-family residential lot shall be sealed or certified by:

12 (a) a Florida registered professional engineer; or
13 (b) a Florida registered professional surveyor; or
14 (c) a Florida registered professional landscape architect; or
15 (d) an Environmental Professional certified by the National Association of
16 Environmental Professionals or the Florida Association of Environmental
17 Professionals.

18 **Section 6. APPEALS**

19 An applicant may appeal any decision made by the Department to an appeal
20 board appointed by resolution of the Board of County Commissioners. A written
21 notice of appeal shall be filed by the applicant with the Director of the
22 Department within twenty (20) days from receipt of the decision appealed from,
23 setting forth in detail the factual basis for such an appeal. The matter shall
24 be reviewed in hearing by the appeal board within sixty (60) days of the
25 Department's receipt of a request. The appeal board shall enter a decision by
26 written order no later than ten (10) days following conclusion of the hearing.
27 The order shall include findings of fact and conclusions of law and shall be
28 deemed final administrative action. An applicant or the Department may appeal
29 a final decision of the appeal board within thirty (30) days of the rendition
30 of the decision by filing a petition for Writ of Certiorari in Circuit Court of
31 the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

32 **Section 7. FEES**

33 7.01 Permit application fees shall be nonrefundable.

34 7.02 All application fees paid by check shall be made payable to the "Palm
35 Beach County Board of County Commissioners."

1 7.03 The following schedule of fees is hereby adopted to supplement the cost
2 of evaluating and issuing permits and monitoring compliance of issued permits:

| Construction or Activity | Fee |
|--|---------------------------------|
| (a) Dredge and/or Fill | |
| (1) 100 c.y. | \$100 |
| (2) 101 c.y. to 10,000 c.y. | \$200 plus \$0.03 for each c.y. |
| (3) Over 10,000 c.y. | \$500 plus \$0.03 for each c.y. |
| (b) Dockage and over-water structures | |
| (1) 500 sq. ft. or less | \$100 |
| (2) 501 to 1,000 sq. ft. | \$150 |
| (3) 1,001 to 10,000 sq. ft. | \$300 |
| (4) 10,001 sq. ft. or more | \$500 |
| (c) Bulkheads, revetments, and seawalls | |
| (1) 30 lineal feet or less | \$ 85 |
| (2) 31 to 500 lineal feet | \$200 |
| (3) 501 lineal feet or more | \$595 |
| (d) Boat ramps | \$200 |
| (e) Any other alteration of jurisdictional wetlands not provided for above | \$400 |
| (f) Mangrove alteration - not within a DNR designated aquatic preserve. | |
| (1) Up to 100 lineal feet of shoreline | \$100 |
| (2) Over 100 lineal feet of shoreline | \$200 |
| (g) Mangrove alteration - within a DNR designated aquatic preserve. | |
| (1) Fee for any shoreline length | \$400 |

28 7.04 Fees shall be assessed cumulatively, accounting for each aspect of a
29 proposed project, with a total fee not to exceed five thousand dollars (\$5,000).

30 7.05 For projects within their approved budgets, State agencies and Special
31 Taxing Districts having drainage and/or water control authority are exempt from
32 the permit application fee requirement.

33 7.06 The above fee schedule shall be reviewed annually by the Board of
34 County Commissioners and may be revised by resolution duly adopted by the Board

1 of County Commissioners.

2 Section 8. ENFORCEMENT

3 8.01 Any projects, activities or alterations which would have been in
4 violation of Palm Beach County Ordinance No. 81-18, as amended, or 78-5, as
5 amended, during its effective period, shall continue to be violations under this
6 Ordinance but shall be subject to prosecution under the respective Ordinance.

7 8.02 It shall be a violation of this Ordinance for any individual to
8 alter, or cause or allow to be altered, any jurisdictional wetland without
9 benefit of a Department permit, or in contravention to a Department permit.
10 Activities specifically exempted by this Ordinance shall not be a violation of
11 this rule.

12 8.03 The Department shall have available to it all enforcement remedies
13 made available pursuant to Chapter 77-616, Laws of Florida, as amended.

14 Section 9. CRITERIA FOR GRANTING PERMITS

15 9.01 A permit may not be issued pursuant to this Ordinance until it is
16 determined that the following general criteria will be met:

17 (a) There shall be no net loss of wetland values and functions.

18 (b) The project will not adversely affect the conservation of fish or
19 wildlife or their habitats.

20 (c) The project will not cause excessive shoaling or erosion.

21 (d) The project will not adversely affect commercial or recreational
22 fisheries or their habitat.

23 (e) Endangered species, threatened species, and species of special concern
24 and/or their habitat will not be adversely impacted.

25 (f) Project alternatives and modifications to lessen impacts have been
26 determined to be infeasible.

27 (g) The project is not in contravention with any other federal, state or
28 local designated preserve or conservation or mitigation area.

29 (h) The Department determines that the cumulative impacts of the subject
30 project and other similar projects will also meet the criteria of this
31 section.

32 (i) No dredging or filling shall occur in seagrasses except that which may
33 be allowed by Section 9.02.

34 (j) Any structure proposed on or over a wetland is water-dependent.

1 9.02 In addition to the foregoing general criteria, a permit shall not be
2 issued for the following specific activities unless and until the following
3 additional specific criteria have been met:

4 (a) Docks. When issuing permits for docks, the Department shall require
5 that:

6 (1) Mooring areas shall be located in water depths at least 3' MLW or
7 OLW; and
8 (2) Mooring areas, roof structures and termini shall not be located
9 over seagrasses; and
10 (3) An access pier permitted to pass over seagrasses shall be no more
11 than 4' wide, or up to 6' wide if elevated 5' above MHW.

12 (b) Bulkheads. Any bulkhead permitted by the Department (except those
13 located within a commercial boat haul out facility or upland marina
14 basin) shall be faced with:

15 (1) Riprap stacked at a minimum 2 horizontal: 1 vertical (2H:1V)
16 slope, at least to the height of MHW (or OHW), or 4' above bottom,
17 whichever is less; or
18 (2) A minimum 3' wide littoral zone planted and maintained with native
19 aquatic vegetation at the appropriate elevations.

20 (c) Access Channels. An access channel may be permitted through
21 seagrasses to reach an upland boat basin provided that:

22 (1) The channel meets all other general criteria of Section 9.01; and
23 (2) The channel does not exceed the minimum width necessary for safe
24 operation of the channel.

25 (d) Mangrove Alteration. The Department shall adhere to the following
26 criteria when issuing mangrove alteration permits:

27 (1) Alteration for a View.

28 a) A mangrove tree may be permitted to be trimmed or maintained
29 not less than seven (7) feet tall as measured from the
30 substrate.

31 b) A mangrove tree may not be reduced in height or canopy by
32 greater than thirty percent (30%) of its original (prior to
33 any alteration) height or canopy.

34 c) Trimming for a view may be permitted through a mangrove
35 fringe whose width does not exceed 30 feet as defined in

Section 3 of this Ordinance.

- d) Up to fifty percent (50%) of an owner's shoreline or a shoreline length equal to or less than the shoreline length of the habitable portion of the dwelling that faces the water (whichever is less) may be permitted to be altered when necessary to achieve a water view.
- e) Cut plant material (except leaves) shall not be placed in jurisdictional wetlands.
- f) No root structures (including prop roots and pneumatophores) may be altered.
- g) Trimming that can reasonably be expected to result in the death of a mangrove tree shall not be permitted.
- h) Any mangrove the trunk of which is greater than 12 inches in diameter at breast height, or 37 inches in circumference, shall not be trimmed.

(2) Alteration for Dock Access.

- a) A dock up to 4' wide may be permitted to pass through a mangrove fringe.
- b) Dock pilings may be spaced no closer than 10' apart within the fringe, or not placed within the fringe where possible.

(3) Alteration for Other Reasons. The Department may permit the minimum amount of alteration as is reasonably necessary, provided the alteration is consistent with the general criteria of Section 9.01.

(4) To provide an incentive for the propagation of mangroves, the Department shall waive the application fee for any permit issued, provided that the mangroves are naturally less than twenty-four (24) inches tall at the time of application.

(5) Trimming Freeze Damaged Mangroves. Freeze damaged mangroves may be trimmed to a greater extent than live mangroves for the purposes of removing dead wood. Freeze damaged mangroves which occur outside of an otherwise permitted trim area for live mangroves shall remain untrimmed, except for those deemed by the Department to pose a safety hazard. A safety hazard shall be determined to exist when a dead mangrove tree is within twenty

feet or fall height of any habitable portion of a dwelling.
Permits to alter freeze damaged mangroves shall be subject to the
following conditions:

- (a) The Department shall not consider a request to alter freeze damaged mangroves until October 1, following the freeze event.
- (b) Freeze killed mangroves may be cut no lower than four feet above the substrate or one foot above the highest prop root, whichever is higher above the substrate.
- (c) Freeze damaged mangroves may be altered by removing dead material not closer than one foot to live material, in no case to exceed the specifications of number 2 above.
- (d) Mangroves determined to be a safety hazard may be altered in accordance with specifications 2 and 3 above.

(6) Mitigation for Mangrove Alteration. The following specifications shall apply to permits issued to trim mangroves within a DNR-designated Aquatic Preserve:

- (a) All permits issued to trim more than fifty lineal feet of mangrove shoreline shall require mitigation at a ratio of one square foot for every lineal foot of mangrove shoreline permitted to be trimmed. Such mitigation shall be consistent with Section 10.03(b)-(g).
- (b) Where mitigation is determined by the Department to be impractical on-site, and no apparently suitable off-site mitigation areas exist, the permittee shall be required to make a monetary contribution to the Palm Beach County Pollution Recovery Trust Fund. The permittee, prior to any trimming, shall remit \$2 for every lineal foot of mangrove shoreline permitted to be trimmed. Said monies shall be dispersed by the Board of County Commissioners for environmental enhancement.

1 (e) Marinas

2 (1) General Intent. It shall be the Department's policy to:

3 a) Favor upland boat storage over waterward storage;

4 b) Favor dredging uplands to create a marina basin over dredging

5 wetlands;

6 c) Favor making use of naturally occurring deep water areas over

7 dredging shallow areas;

8 d) View the avoidance of impacts to seagrasses as a crucial

9 factor in determining marina location.

10 (2) Marina Location.

11 a) Applications for new marinas shall not be permitted where

12 local zoning prohibits such use.

13 b) Applications for new commercial Marinas and/or fueling

14 facilities shall not be permitted in any area designated by

15 the State of Florida as a Class I or II Waterbody, or the

16 Jenson Beach to Jupiter Inlet Aquatic Preserve, or that

17 portion of the Loxahatchee River Aquatic Preserve that lies

18 west of Alternate State Road A1A.

19 (3) Marina Design.

20 a) Boat mooring sites shall not be permitted over seagrasses.

21 b) Where pier access is gained over seagrasses, the pier may be

22 up to 4' wide, or 6' wide if elevated at least 5' above MHW.

23 c) Boat mooring sites may be approved only in water depths of

24 -4' MLW (or -3' OLW in freshwater) for slips up to 30' long.

25 Greater depths shall be required for larger vessels so as to

26 prevent prop-dredging.

27 d) Marinas in tidal waters shall be designed and located so as

28 to provide a basin turnover or water replacement time of not

29 more than 72 hours with no dead spots and pollutant

30 concentrations not to exceed those standards of Section 12.

31 It shall be the responsibility of the applicant to

32 demonstrate compliance with this requirement.

(4) Support Services.

a) All marinas shall provide at least one sewage pump-out facility capable of handling sewage in accordance with state and local standards for every forty (40) slips permitted by this Ordinance. Pump-out facilities should be located at fueling facilities when available.

b) All gas pumps which service boats shall be equipped with an operating automatic cut-off device at the nozzle so as to avoid spillage of fuel into the water. Handle valve latches or other hold-open devices are prohibited.

(5) **Marking.**

a) All marinas adjacent to shallow waters (less than -4' MLW) or seagrasses shall be required to effectively mark points of ingress and egress between the marina and deep water channel. All such devices shall be marked pursuant to Section 327.40, Florida Statutes.

b) Any environmentally sensitive areas identified by the Department including, but not limited to seagrasses, shall be marked by the permittee with the intention of keeping boaters away from such areas. Each project shall be evaluated separately to determine environmentally sensitive areas.

c) All marinas in tidal waters shall post at least one manatee awareness sign (as approved by the Florida Department of Natural Resources) at a prominent location within the marina.

Section 10. MITIGATION.

10.01 For projects that do not meet the permitting criteria of Section 9, the Department may evaluate proposals for mitigation. The Department shall first use the criteria of Section 10.02 to determine when mitigation is appropriate. The criteria of Section 10.03 shall be used to set standards for accepting mitigation proposals.

10.02 When to Evaluate Mitigation Proposals.

(a) No Alternative Site. Restoration or creation may be permitted to compensate for new wetland loss only where a permit applicant demonstrates that the proposed activity cannot be practically located

1 at an alternative, nonwetland site. The applicant must also
2 demonstrate that the proposed activity cannot practically be located
3 on the upland portion of this site or another site.

4 (b) All Practical Measures will be Taken to Reduce Impact. Restoration or
5 creation may be permitted to compensate for wetland loss only where the
6 permit applicant has made reasonable project modification measures to
7 reduce wetland loss and degradation such as site design to reduce fill
8 into or drainage of the wetland, provision of an upland buffer area and
9 other erosion control measures where the activity will cause erosion,
10 construction of pretreatment facilities for stormwater to be discharged
11 into wetlands, and undertaking activities at such time of year as would
12 have the least impact upon the wetland or endangered or threatened
13 species.

14 10.03 Standards for Mitigation.

15 (a) No Overall Net Losses. Restoration or creation may be permitted to
16 compensate for wetland losses only where restoration and/or creation
17 will restore lost wetland functions and values. The following
18 mitigation ratios shall be presumed to restore wetland functions and
19 values when done in kind:

20 (1) Tidal wetlands 2.0:1

21 (2) Freshwater forested swamp, non-cypress

22 dominated 2.5:1

23 (3) Freshwater forested swamp, cypress

24 dominated 2.0:1

25 (4) Freshwater marshes 1.5:1

26 Only where the created wetland can be expected to surpass the values
27 and functions of the existing wetland can the ratio be adjusted
28 downward.

29 The Department shall require a ratio for restored or created functions
30 and/or acreage exceeding these ratios where:

31 (1) Uncertainties exist as to the probable success of the proposed
32 restoration or creation; or
33 (2) The degradation or destruction will deprive Palm Beach County of
34 various wetland values for a period of time until the restoration
35 or creation is completed and functional; or

- (3) Mitigation is proposed offsite or not in kind; or
- (4) Mitigation proposed includes restoration or enhancement of existing wetlands rather than creation of new wetlands.

(b) Adequate Hydrology, Soils and Other Basic Requirements. Wetland restoration, enhancement, or creation may be permitted only where those hydrologic, soil, side slope, and other basic characteristics of the proposed project are adequate to achieve the proposed project goals.

(c) Persistence. Wetland restoration or creation may be permitted to compensate for new wetland losses only where the restored or created wetland will be at least as persistent as the existing wetland system it is intended to replace.

(d) Sufficient Financial Resources. Evidence of financial resources necessary to complete the mitigation activities shall be provided by the applicant for all projects where the cost of mitigation is expected to exceed \$10,000. Such evidence may be:

- (1) a letter of credit acceptable to the Department; or
- (2) a performance bond acceptable to the Department; or
- (3) similar security acceptable to the Department.

(e) Maintenance and Monitoring. For all mitigation projects, the Department shall require, at a minimum:

- (1) Maintenance of at least eighty percent (80%) survivorship of all plantings for at least two (2) years; and
- (2) Quarterly monitoring reports of the status of the mitigation area, including number of surviving plantings and any plantings made to maintain eighty percent (80%) survivorship; and
- (3) Quarterly replantings to maintain eighty percent (80%) survivorship; and
- (4) Maintenance and removal of exotic species.

(f) Mitigation Before Alteration. Except where prohibited by necessary construction techniques or sequences, as determined by the Department, the initial construction, earthwork and planting for mitigation shall be completed prior to the permitted alteration of wetlands.

(g) Buffer Zones. Buffer zones may be required around isolated wetlands that are created, enhanced or preserved pursuant to this Ordinance. Actual delineation of the buffer zone may vary

1 according to site specific conditions. Buffer zones which extend at
2 least fifteen (15) feet landward from the edge of the wetland in all
3 places and average twenty-five feet from the landward edge of the
4 wetland will be presumed to be adequate.

5 Section 11. EXEMPTIONS

6 11.01 The following activities are exempt from the permitting requirements
7 of this Ordinance:

8 (a) The installation of transmission lines that do not require dredging
9 and/or filling of wetlands or alteration of mangroves or seagrasses.

10 (b) The installation of a dock in non-tidal waters, provided that:

11 (1) Its coverage over jurisdictional wetlands is four hundred (400)
12 square feet or less; and

13 (2) It is for private, recreational, noncommercial use; and

14 (3) It is the sole dock as measured along the shoreline for a minimum
15 distance of sixty-five (65) feet; and

16 (4) No dredging or filling is necessary except for the placement of
17 pilings; and

18 (5) It terminates in at least -3 feet OLW; and

19 (6) It will not obstruct navigation.

20 (c) The replacement or repair of existing functional piers, mooring piles
21 or boat ramps at the same location and of the same dimensions as the
22 pier, mooring pile or boat ramp being repaired or replaced.

23 (d) The placement of a boat lift or mooring pilings in the intended mooring
24 area of a dock permitted by the Department.

25 (e) Replacement or repair of an existing functional seawall, not more than
26 one (1) foot waterward, where no wetland vegetation will be altered,
27 and dredging is done only as necessary to install the new wall, and
28 provided that the new wall is faced with:

29 (1) Riprap stacked at a minimum 2H:1V slope, at least to the height
30 of MHW (or OHW), or 4' above bottom, whichever is less; or

31 (2) A minimum 3' wide littoral zone planted and maintained with native
32 aquatic vegetation at the appropriate elevations as determined by
33 the Department.

34 (f) Placement of supporting batter piles at an existing functional seawall
35 provided that no wetland vegetation would be altered and dredging is

performed only as necessary to place the pilings.

- (g) Alteration of mangroves, as necessary, by a registered land surveyor, in the performance of land surveying, such alteration not to exceed three (3) feet in width.
- (h) Maintenance dredging of existing man-made tidal water bodies to original permitted specifications or -5' MLW (or OLW) provided that:
 - (1) Wetland vegetation will not be impacted by the proposed dredging; and
 - (2) The dredged spoil is deposited on a self-contained upland site with no water or spoil material returned to the canal; and
 - (3) Turbidity control is used as necessary to prevent a water quality violation of Section 12.
- (i) The performance of maintenance dredging of existing man-made nontidal canals, channels, and intake and discharge structures, where the spoil material is to be removed and deposited on a self-contained, upland spoil site which will prevent the escape of the spoil material and return water from the spoil site into surface waters of the state, provided no more dredging is performed than is necessary to restore the canals, channels, and intake and discharge structures to original design specifications, and provided further that control devices are used at the dredge site to prevent turbidity and toxic or deleterious substances from discharging into adjacent waters during maintenance dredging. This exemption shall apply to all canals constructed before April 3, 1970, and to those canals constructed pursuant to all necessary state permits on or after April 3, 1970. This exemption shall not apply to the removal of a natural or man-made barrier separating a canal or canal system from adjacent waters of the state. For those canals constructed prior to April 3, 1970, where no previous permit has been issued by the Board of Trustees of the Internal Improvement Trust Fund or the United States Army Corps of Engineers for construction or maintenance dredging of the existing man-made canal or intake or discharge structure, such maintenance dredging shall be limited to a depth of no more than 5 feet below OLW.

1 (j) The installation of aids to navigation, including but not limited to
2 bridge fender piles, "No Wake" and similar regulatory signs, and buoys
3 associated with such aids, provided that the devices are marked
4 pursuant to Section 327.40, Florida Statutes.

5 (k) Repair or replacement of existing stormwater discharge pipes to
6 original configurations.

7 (l) Construction and maintenance of swales.

8 (m) The replacement or repair of open-trestle foot bridges and vehicular
9 bridges provided that no more dredging or filling is performed than
10 necessary to replace or repair pilings and that the structure to be
11 replaced or repaired is the same length, the same configuration, and
12 in the same location as the original bridge, and provided that no
13 debris from the original bridge shall be allowed to remain in
14 jurisdictional wetlands.

15 (n) The placement of riprap at the toe of an existing seawall provided that
16 no mangroves or seagrasses would be impacted.

17 (o) The construction of a culverted roadway or bridge crossing of a wholly
18 artificial, non-tidal drainage conveyance canal provided that:
19 (1) The size and number of culverts are adequate to pass normal high
20 water stages of the canal being crossed, and;
21 (2) The elevation of the culvert invert shall be at the existing
22 bottom grade of the canal; and
23 (3) The top width of the roadway shall not exceed one hundred
24 twenty (120) feet; and
25 (4) Clean fill shall be used, with resulting side slopes no steeper
26 than 2H:1V; and
27 (5) The structure shall be maintained so as to continue to provide at
28 least the same volume of discharge through the culvert(s); and
29 (6) Turbidity control devices are placed on either side of the
30 structure so as to effectively isolate the project area from
31 upstream and downstream waters.

32 (p) The installation, replacement, repair and maintenance of water control
33 structures located in canal conveyance systems owned and operated by
34 water management special taxing districts of the State of Florida.

- (q) Those activities specifically exempted by the Palm Beach County Environmental Control Act, 77-616, Special Acts, Laws of Florida.
- (r) Those projects to alter isolated wetlands that are permitted pursuant to the South Florida Water Management District isolated wetlands rule on or before the effective date of this Ordinance, or where an application is received by the South Florida Management District on or before the effective date of this Ordinance.
- (s) Those projects for which the Department determines that there will be no significant adverse environmental impacts.
- (t) The replacement or repair of subaqueous transmission and distribution lines laid on, or imbedded in, the bottom of a wetland.
- (u) Dredging or filling which is required to connect stormwater management facilities permitted by the South Florida Water Management District to non-tidal wetlands and which is incidental to the construction of such stormwater management facilities. Incidental dredging or filling shall include:
 - (1) Headwalls and discharge structures; and
 - (2) Erosion control devices or structures to dissipate energy which are associated with discharge structures; and
 - (3) Outfall pipes less than 20' in length in waters provided the pipe does not interfere with navigation; and
 - (4) The connection of ditches dug through the uplands where the dredging or filling for the connection to wetlands extends less than 20' in length into the wetland; and
 - (5) Other dredging or filling which the Department determines will have a similar effect as those activities listed above.

Section 12. WATER QUALITY STANDARDS

The water quality rules and standards as set forth in Chapter 17-302 Florida Administrative Code existing on the effective date hereof and as may be amended from time to time, are hereby adopted and incorporated by reference as if set forth in full herein. The mixing zones referenced in Chapter 17-4, Florida Administrative Code, are also adopted as if set forth in full herein.

Section 13. REPEAL OF LAWS IN CONFLICT

All local laws and ordinances applying to Palm Beach County in conflict with any provisions of this Ordinance are hereby repealed to the extent of such

1 conflict. Subject to the provisions of paragraph 8.01 above, Palm Beach County
2 Ordinance No. 81-18, as amended, is hereby expressly repealed.

3 Section 14. CONTINUING REVIEW

4 The Department shall report back to the Board of County Commissioners
5 concerning the administration of this Ordinance 180 days subsequent to the
6 effective date hereof and every 180 days thereafter for a period of 2 years from
7 the effective date hereof.

1 Section 15. SUNSET CLAUSE

2 Those provisions of this Ordinance that are duplicative of other state
3 regulatory efforts but that are not delegated by said agencies within twenty-four
4 (24) months, shall sunset twenty-four (24) months after approval unless otherwise
5 renewed by the Board of County Commissioners.

6 Section 16. SEVERABILITY

7 If any section, paragraph, sentence, clause, phrase, or word of this
8 Ordinance is for any reason held by the Court to be unconstitutional,
9 inoperative, or void, such holding shall not affect the remainder of this
10 Ordinance.

11 Section 17. INCLUSION IN THE CODE OF LAWS AND ORDINANCES

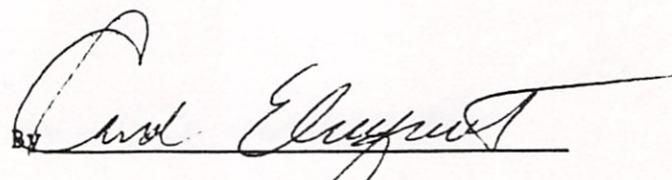
12 The provisions of this Ordinance shall become and be made a part of the code
13 of laws and ordinances of Palm Beach County, Florida. The sections of this
14 Ordinance may be renumbered or relettered to accomplish such, and the word
15 "ordinance" may be changed to "section," "article," or any other appropriate
16 word.

17 Section 18. EFFECTIVE DATE

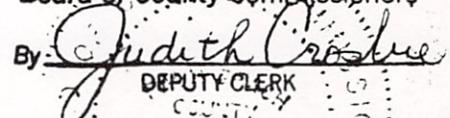
18 The provisions of this Ordinance shall become effective upon receipt of
19 acknowledgement by the Secretary of State and shall apply to all current and
20 future applications within its jurisdiction.

21 APPROVED AND ADOPTED by the Board of County Commissioners sitting as the
22 Environmental Control Board of Palm Beach County, Florida, on the 13th day of
23 November, 1990.

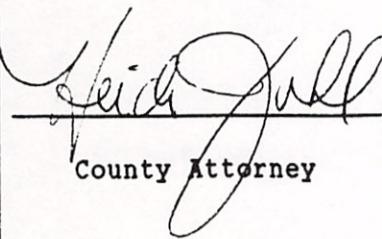
24 PALM BEACH COUNTY, FLORIDA, BY ITS
25 BOARD OF COUNTY COMMISSIONERS

26 
27 Chairman

JOHN B. DUNKLE, CLERK
Board of County Commissioners

By 
JUDITH C. CROOK
DEPUTY CLERK
COUNTY COMMISSIONERS

1 APPROVED AS TO FORM AND
2 LEGAL SUFFICIENCY

3 
4 County Attorney

5 Acknowledgement by the Department of State of the State of Florida, on this,
6 the 26th day of November, 1990.

7 EFFECTIVE DATE: Acknowledgement from the Department of State received on
8 the 29th day of November, 1990, at 9:49 A.M., and filed in
9 the Office of the Clerk of the Board of County Commissioners of Palm Beach
10 County, Florida.

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, JOHN B. DUNKLE, ex-officio Clerk of the
Board of County Commissioners certify this to
be a true and correct copy of the original filed in
my office on 11/29/90
DATED at West Palm Beach, FL on 11/29/90
JOHN B. DUNKLE, Clerk,
By: Deputy Clerk D.C.